

Translation

10/534797
PATENT COOPERATION TREATY

PCT/EP2003/011728



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2002/113 WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/011728	International filing date (<i>day/month/year</i>) 23 October 2003 (23.10.2003)	Priority date (<i>day/month/year</i>) 14 November 2002 (14.11.2002)
International Patent Classification (IPC) or national classification and IPC A61L 9/12		
Applicant LTS LOHMANN THERAPIE-SYSTEME AG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet. <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of <u>1</u> sheets.
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 30 April 2004 (30.04.2004)	Date of completion of this report 15 February 2005 (15.02.2005)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/011728

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
 pages _____ 1-19 _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the claims:
 pages _____ 2-17 _____, as originally filed
 pages _____, as amended (together with any statement under Article 19
 pages _____, filed with the demand
 pages _____ 1 _____, filed with the letter of _____ 03 February 2005 (03.02.2005)
- ☒ the drawings:
 pages _____ 1/1 _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

- These elements were available or furnished to this Authority in the following language _____ which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/11728

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1-17	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-17	NO
Industrial applicability (IA)	Claims	1-17	YES
	Claims		NO

2. Citations and explanations

This report makes reference to the following documents:

D1: US-A-4 529 125

D2: US-A-4 874 129

D3: FR 2 745 720

1. The present application fails to meet the requirements of PCT Article 33(1) because the subject matter of independent claim 1 does not involve an inventive step within the meaning of PCT Article 33(3).

- 1.1 D1 is regarded as the prior art closest to the subject matter of claim 1. D1 discloses (the references in parentheses are to D1):
a dispenser for the controlled release of volatile substances (see figures 1-3), comprising a reservoir (12) that contains at least one volatile substance (see column 3, lines 40-49), a first control element (18) that exerts a control function that is dependent on the substance properties of the at least one volatile substance and the material properties of the constituents of the first control element (18) (see column 3, lines 51-63: "diffusion layer"), and a second control element (22) that exerts a control function that is independent of the substance

properties of the at least one volatile substance and the material properties of the constituents of the first control element (18) (see column 3, line 67 to column 4, line 6).

1.2 Thus the subject matter of claim 1 differs from the known dispenser in that the first control element has pressure sensitive adhesive properties.

1.3 The problem to be solved by the present invention can therefore be regarded as that of providing a dispenser that can be produced more easily.

1.4 The solution in **claim 1** of the present application cannot be regarded as inventive for the following reasons (PCT Article 33(3)):

The control element with pressure sensitive adhesive properties is only one of a number of obvious possibilities from which a person skilled in the art would choose, according to the circumstances, in order to solve the problem of interest, without thereby being inventive (see, for example, D3: figure 5; page 7, line 27 to page 8, line 6; page 3, line 22 to page 4, line 2: "the adhesion of said layers to each other is ensured by an adhesive incorporated in at least one of said layers").

2. The same argument applies correspondingly to independent claims 16 and 17. The subject matter of **claims 16 and 17** therefore does not involve an inventive step (PCT Article 33(3)).

3. **Dependent claims 2 to 15** do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for inventive step (see D1, D2, D3 and the corresponding passages cited in the search report).
